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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

Investigation of Alascom, Inc. )

Interstate Transport and Switching Services )

Tariff FCC No. 11 )

CC Docket No. 95-182

**ORDER**

Adopted: December 21, 2005

Released: January 5, 2006

By the Commission:

**I. INTRODUCTION**

1. This order terminates the investigation of Alascom Tariff FCC No. 11. The investigation was initiated by the Common Carrier Bureau, now Wireline Competition Bureau (Bureau) in 1995.

**II. BACKGROUND**

2. In 1994 the Commission established a new market structure for telecommunications services in Alaska designed to "promote more competition, open entry, and improve efficiency."<sup>1</sup> This *Market Structure Order* required Alascom to offer certain "common carrier" services on a non-discriminatory basis at rates that reflect the costs of the services.<sup>2</sup> These Alascom common carrier services are defined as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier."<sup>3</sup> The *Market Structure Order* further required Alascom to establish two geographic rate zones and to allocate the costs of providing service to these two zones pursuant to a cost allocation plan (CAP) to be developed by Alascom and approved by the Commission.<sup>4</sup> After requiring certain revisions, the Bureau approved Alascom's CAP in 1995.<sup>5</sup>

<sup>1</sup> See *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3025, para. 12 (1994) (*Market Structure Order*); see also *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Final Recommended Decision, 9 FCC Rcd 2197 (Jt. Bd. 1993).

<sup>2</sup> *Market Structure Order*, 9 FCC Rcd at 3023, 3032, paras. 4, 48.

<sup>3</sup> *Id.* at 3023 n.5.

<sup>4</sup> *Id.* at 3023, 3033, paras. 4, 58.

<sup>5</sup> *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, Order, 10 FCC Rcd 9823 (Com. Car. Bur. 1995), reconsideration granted in part and denied in part, AAD 94-119, Memorandum Opinion and Order on Reconsideration and Order Approving Cost Allocation Plan, 12 FCC Rcd 1991 (Com. Car. Bur. 1997).

3. On September 22, 1995, Alascom filed its first common carrier services tariff with rates produced by the CAP, Tariff FCC No. 11.<sup>6</sup> Petitioner GCI challenged the tariff, raising questions regarding its lawfulness, and, based on this petition, the Bureau suspended the tariff for one day, imposed an accounting order, and instituted an investigation.<sup>7</sup> The Bureau has similarly suspended all of Alascom's subsequent annual Tariff FCC No. 11 revisions, imposed accounting orders, instituted investigations, and incorporated each year's investigation into the investigation of Alascom's original Tariff FCC No. 11.<sup>8</sup> On July 30, 2004 the Bureau issued an order designating issues in this investigation.<sup>9</sup> Alascom filed its direct case on August 30, 2004 and September 17, 2004.<sup>10</sup> GCI and ACS-Long Distance filed oppositions on October 13, 2004,<sup>11</sup> and Alascom filed its Reply on November 2, 2004.<sup>12</sup>

4. On December 8, 2004, the Consolidated Appropriations Act, 2005 became law.<sup>13</sup> Section 112 of that Act provides:

(a) Notwithstanding any other provision of law or any contract: (1) the rates in effect on November 15, 2004, under the tariff (the "tariff") required by FCC 94-116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the "market") described in section 4.7 of the tariff (collectively the "covered services"); (2) beginning April 1, 2005, through December 31, 2009, no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than 5 percent of such contract's total value; and (3) revenues collected hereunder (less costs) for calendar years 2005 through 2009 shall be used to support and expand the network in the market.

<sup>6</sup> Alascom, Inc., Transmittal No. 790, Tariff FCC No. 11 (filed Sept. 22, 1995).

<sup>7</sup> Alascom, Inc. Transmittal No. 790, Tariff FCC No. 11, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995).

<sup>8</sup> Alascom Revisions to Tariff FCC No. 11, Transmittal No. 807, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996); Investigation of Alascom, Inc., Interstate Transport and Switching Services, Alascom, Inc. Revisions to Tariff FCC No. 11, Transmittal No. 852, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); Transmittal No. 921, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); Transmittal Nos. 921, 937, 941 and 942, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); Transmittal No. 993, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); Transmittal No. 1088, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); Transmittal No. 1184, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); Transmittal No. 1260, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001); Transmittal No. 1278, Order, 18 FCC Rcd 22416 (WCB 2003); Transmittal No. 1281, Order, 18 FCC Rcd 26740 (WCB 2003).

<sup>9</sup> Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11, CC Docket No. 95-182, Order Designating Issues for Investigation, 19 FCC Rcd 14461 (WCB 2004).

<sup>10</sup> Letter from Charles R. Naftalin, counsel for Alascom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 30, 2004); Direct Case of Alascom, Inc. (filed Sept. 17, 2004).

<sup>11</sup> General Communication, Inc., Opposition to Direct Case (filed Oct. 13, 2004); see also ACS Long Distance Comments on the Direct Case of Alascom, Inc. (filed Oct. 13, 2004).

<sup>12</sup> Reply of Alascom, Inc. (filed Nov. 2, 2004).

<sup>13</sup> Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809 (2004).

(b) Effective on the date of enactment of this Act: (1) the conditions described in FCC 95-334 and the related conditions imposed in FCC 94-116, FCC 95-427, and FCC 96-485; and (2) all pending proceedings relating to the tariff, shall terminate. Thereafter, the State regulatory commission with jurisdiction over the market shall treat all interexchange carriers serving the market the same with respect to the provision of intrastate services, with the goal of reducing regulation, and shall not require such carriers to file reports based on the Uniform System of Accounts.

(c) Any provider may file to enforce this section (including damages and injunctive relief) before the FCC (whose final order may be appealed under 47 U.S.C. 402(a)) or under 47 U.S.C. 207 if the FCC fails to issue a final order within 90 days of a filing. Nothing herein shall affect rate integration, carrier-of-last-resort obligations of any carrier or its successor, or the purchase of covered services by any rural telephone company (as defined in 47 U.S.C. 153(37)), or an affiliate under its control, for its provision of retail interstate interexchange services originating in the market.<sup>14</sup>

### III. DISCUSSION

5. Pursuant to the Consolidated Appropriations Act, 2005 --

the rates in effect on November 15, 2004, under the tariff (the "tariff") required by FCC 94-116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the "market") described in section 4.7 of the tariff (collectively the "covered services").<sup>15</sup>

The document referred to as "FCC 94-116" is the Commission's *Market Structure Order*,<sup>16</sup> and the tariff "required by FCC-94-116" is Alascom's common carrier services tariff, Tariff FCC No. 11.<sup>17</sup> The legislation also states that, "all pending proceedings relating to the tariff, shall terminate."<sup>18</sup> The tariff investigation is a proceeding relating to the tariff. Therefore, we find that the legislation terminates the pending investigation.<sup>19</sup>

### IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, and sections 4(i)-4(j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 201-205, and 403, the investigations

<sup>14</sup> *Id.* at § 112, 118 Stat. at 3345.

<sup>15</sup> *See id.* at § 112(a).

<sup>16</sup> *See Market Structure Order*, 9 FCC Rcd at 3023. The FCC assigns a number to each order it issues. "FCC 94-116" refers to the FCC number assigned to the *Market Structure Order*. *See id.*

<sup>17</sup> *See id.* at 3027, 3033, paras. 23, 59; *see also* Alascom Tariff FCC No. 11 (as of Nov. 15, 2004).

<sup>18</sup> Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 112(b), 118 Stat. at 3345.

<sup>19</sup> Nothing herein modifies or otherwise affects the voluntary commitments made by SBC Communications, Inc., and AT&T Corp. with respect to Alaska in connection with their joint application for transfer of control. *See SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, FCC No. 05-183 (rel. Nov. 17, 2005).

and accounting orders imposed by the Wireline Competition Bureau and its predecessor, the Common Carrier Bureau, in CC Docket No. 95-182 with respect to Alascom, Inc. Transmittal Nos. 790, 807, 852, 921, 937, 941, 942, 993, 1088, 1184, 1260, 1278, and 1281 concerning its Tariff FCC No. 11, ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary